IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8327 OF 2007

Nandkumar Daji Sankhe & Anr. .. Petitioner.
V/s.
Shri.Vinayak Harishchandra Save & Ors. .. Respondents.

Mr.K.N.Kore for petitioner.
Mr.A.G.Damle i/b.S.G.Karandikar for respondent No.1.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 20th NOVEMBER, 2007.

P.C.:

1. Heard Mr.Kore appearing for the petitioner. Perused the interim order of the District Court. The District Court, during the pendency of the Appeal, preferred by the petitioner against dismissal of a suit instituted by him has observed that the order of status-quo passed earlier cannot be continued. The learned District Judge has adverted to some materials at the prima-facie stage and observed that the plaintiff's suit has been dismissed on the basis that he has failed to prove that he was in possession of the suit land.

2. The apprehension that the respondents would disturb physical possession of the petitioner is without any basis. Therefore, the apprehension is not well founded. Even otherwise, if the petitioner succeeds and

the judgement and decree of the Trial Court is reversed, still there are enough powers available to the Courts in Law to restore what is necessary to be restored in the interest of justice. Such powers of restoration and restitution are inherent and available under the Code of Civil Procedure undisputedly.

3. There is also no basis for the apprehension that the District Judge would be influenced by his own observations at prima-facie stage. All such observations are prima-facie and tentative, which must not influence the ultimate outcome of the proceedings. Therefore, even this apprehension is without any basis considering the fact that the suit has been dismissed and the lower Appellate Court has vacated its earlier order of status-quo, it would be appropriate if it takes up the Appeal preferred by the petitioner for early hearing and endeavour to dispose of the same as expeditiously as possible and in any event within a period of six months from today. This order is passed in the peculiar facts of this case and considering that the petitioner No.2 is a senior citizen.

4. Petition dismissed.

(S.C.Dharmadhikari, J.)